

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN MARK NOENNIG**, on March 6, 2001 at 3:00 P.M., in Room 472 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Mark Noennig, Chairman (R)  
Rep. Rod Bitney, Vice Chairman (R)  
Rep. Jeff Mangan, Vice Chairman (D)  
Rep. Joan Andersen (R)  
Rep. Eileen Carney (D)  
Rep. Larry Cyr (D)  
Rep. John Esp (R)  
Rep. Dennis Himmelberger (R)  
Rep. Hal Jacobson (D)  
Rep. Rick Laible (R)  
Rep. Jesse Laslovich (D)  
Rep. Bob Lawson (R)  
Rep. Michelle Lee (D)  
Rep. Brad Newman (D)  
Rep. Ken Peterson (R)  
Rep. William Price (R)  
Rep. James Whitaker (R)  
Rep. Cindy Younkin (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Eddye McClure, Legislative Branch  
Pati O'Reilly, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 161, SB 168, SB 178,  
3/2/2001  
Executive Action: SB 161, SB 168, SB 175

**HEARING ON SB 161**

**Sponsor:** Senator Don Hargrove, SD 16

**Proponents:** John Dilliard, MT Dept. of Env. Quality  
Frank Crowley, City of Billings  
Will Selser, Lewis and Clark County

**Opponents:** None

**Opening Statement by Sponsor:** Senator Hargrove, SD 16, introduced SB 161. This is a solid waste clean-up bill. The current statute was written in 1991 and a lot of things have happened since that time and some of things were not all that great. The Solid Waste Management Act has a lot of duplication and inconsistencies, some because of practice and technology that has changed since 1991. Significantly, the statute as it exists was not done very well in the first place. The Department listed all the inconsistencies and the results reflected poorly on everyone. This bill allows us to revise solid waste fees. In 1991 one section called for fees and another section did not address fees. The new types of facilities such as composting, transportation of contaminated soil and weight versus volume, which was not done in 1991, needs to be addressed. The legislative review showed there was a desire for a flat fee and the authority for DEQ to set fees, both of which were addressed with last minute amendments. The 1991 bill had delayed effect dates that stretched into the next biennium and undid things that should have been done. This bill cleans up the mess by providing the DEQ authority, establishes the Board of Environment Review as the governing body for the Department's recommendations, and provides standard boiler plate to ensure the Department performs these duties in a responsible manner. It gets rid of the unconstitutional excess charge for out of state waste. This is included in the executive budget and the fees will be used for technical staff, hydrologists, engineers and that sort of thing. This really is just clarification of authority that is really needed. With that I will sit down and reserve the right to close.  
{Tape : 1; Side : A; Approx. Time Counter : 0 - 4.7}

**Proponents' Testimony:** John Dilliard, DEQ, Read and Submitted written testimony. See Exhibit 1. **EXHIBIT**(loh51a01){Tape : 1; Side : A; Approx. Time Counter : 4.7 - 13}

**Frank Crowley, City of Billings.** The City of Billings is here as a proponent only after conferring with the DEQ. I will make my comments very short because I think that Mr. Dilliard summarized this bill very well. Some of the changes that I think are very appropriate and timely is designating the Board of Environmental

Review as the forum where fees can be acted upon. It has worked very well for all parties to sit down with the Department and coming to an agreement before presenting the facts to the Board for final approval. The city of Billings does not take any fee increases lightly, as they are the largest landfill in the State of Montana and therefore are charged the most. We have brought two amendments, one is to address the need for qualified technical staff to work with a regulated community on these fairly complex issues. The Department has assured us they are going to make one of their priorities getting in house expertise to provide reliable responses to the issues. The second is the amount of fee increase that maybe precipitated over the next biennium. I don't believe that the Department is proposing any FTEs in the current budget, but some of the base adjustment issues and data conversions are going to necessitate a further fee to be imposed on the regulated community. The fees are imposed by tonnage. We have asked the Department to limit their increase to ten percent. They could not limit it right now but have established the ten percent as a basic goal. **EXHIBIT (loh51a02) {Tape : 1; Side : A; Approx. Time Counter : 13 - 16.6}**

**Will Selzer, Solid Waste Manager for Lewis and Clark County.** Indicated that Lewis and Clark County concur with Mr. Crowley's comments, we to stand in support of this bill with the two amendments, one that brings competent and technical personnel to the agency and assurance from the DEQ that increases are pegged at ten percent. **{Tape : 1; Side : A; Approx. Time Counter : 16.6 - 17.8}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** **Rep. Anderson** questions Frank Crowley. Mr. Crowley, in your testimony you said that the this would necessitate a ten percent increase in rates for the city of Billings, I assume that would apply to other areas. Mr. Crowley replied, that would be a fair assumption, this would cause an increase for everyone, because the fee is distributed pro rata across the state. **Rep. Esp** asked Will Selzer, You indicated that you had the assurance from DEQ that fees are going to be the way they are for quite awhile, is that accurate? Will Selzer: No, when the DEQ personnel approached us their initial indication was they wanted to raise the rates ten percent. This bill has evolved quite different from those original discussions, most of it in a positive direction, the ten percent was indicated by the state and we want to be on record as saying that ten percent was the figure mentioned for the increase. We can support the bill as long as that does not get out of hand. **Rep. Esp** asked if there was anything in

this bill that would prevent the Dept from raising the fees. Selzer replied there is nothing directly in the bill other than they have to go through a process with the Board of Environmental Review and that is a more frequent process than coming to the legislature every other year. They now can come to the Board oftener under this bill. I do not know that it is any easier to get an increase from the Board. There is nothing in this bill that locks the fees in. **Esp** asks if the public has input into the Board's decision. Selzer answered - Yes, very much so. **Rep. Peterson** asked Mr. Crowley why is the DEQ setting the fees for Billings landfill? Crowley replied-if my comments indicated that was the case, I certainly want to clear up that notion. The DEQ does not set the fees for Billings landfill. The City of Billings sets the rates for the landfill, using a composite of all the expenses it has in running the landfill. The legislature made a determination a few years ago that the solid waste program should be funded by fees. Once the legislature gave that authority to the DEQ, the DEQ notified all of the landfill offices saying we are now going to be fee funded and you will be charged based upon your volume of your waste. Basically, the bigger you are the more you will pay to us. What DEQ sends to the City of Billings every year is a bill. Billings incorporates that expenses into the fee formula. **Peterson**, what does the City of Billings get from DEQ for the fees they pay? Crowley, that could be a very short answer or very long one, I would not say nothing, I think the federal and state requirements for landfill operations are necessary in order to protect the public health and the environment. There has to be an agency to monitor, inspects, provides information, does some educational processes and in general supervises the administration of those state requirements. If state requirements are not enforced the federal requirements apply directly, I would also suggest Mr. Dilliard or Mr. Selzer might be able to answer your question. **Rep. Peterson** asked Mr. Dilliard: Would you respond to the question I asked Mr. Crowley? Dilliard stated in short they get regulated by the Dept through the statutes and rules, they also get technical assistance as they request. We conduct two inspections a year to review how they are complying with regulations and consult with them at that time to correct any problem areas. The Agency provides training for landfill operators and helps fund the Department that works on the solid waste management plan, which is a global plan for the state. **Rep. Peterson**, do you issue citations if they are not in compliance? Dilliard, no we do not have the authority to issue citations, we can go through an administrative order process or proceed with enforcement action, we do not have citation authority. **Rep. Peterson**, can you give me some ballpark idea of how much the Billings landfill pays annually under the current fee structure? Dilliard, I am taking a guess, I think it is somewhere in the area of \$35,000.00 to \$40,000.00 per year. **Rep. Peterson**, I understand

that under this bill, you are trying to do some clean up, however this bill would give the Dept. power to set fees, right? Dilliard, It actually give the Board the authority to set fees. The Dept. would go to the Board with the suggested fees and then the Board is responsible for adopting, amending or denying the fees. **Rep. Peterson**, what is the procedure for setting those fees? Dilliard, As I explained, we go to the Board, who has final authority. The Board has its hearing, which is open to the Public and considers all input. **Rep. Peterson**, is there any limit on the fees the Board can set? Dilliard, No, I do not believe there is any limit, other than the statutes do require fees to be set on a reasonable basis. **Rep. Esp** to Dilliard, before we repeal a couple of sections of law because you said they were unconstitutional, why were those sections of law enacted. Dilliard, I do not know. I believe these laws were enacted to help stop Montana from becoming a dumping ground for others waste. That statute expired in 1993. **Rep. Noennig**, to Dilliard - you said that the statute requires the fees be reasonably related to the cost of operations, I can't find that in the bill? Dilliard, I think I can find that in the bill, if you will give me a second. I have been told it is in 75-10-125. It states starting in "A" these fees may include a license application fee that reflects the cost of reviewing a consolidated waste management substantial change to the existing facility, a flat annual license fee that reflects the minimal basis fee related to a fixed cost of annual inspection in license renewal and may be upon the categorization that goes into the other sections. I believe that is where I was thinking of, as we have to at least make certain that our fees are justifiable. **Rep. Noennig**; My problem is that I don't see that. When I am looking at line 13 on page 4, it says these fees may include... and as you indicated under section "A" they include a fee that reflects the cost of reviewing, so forth and then under "B" a flat fee that is based upon..., I am not sure, cost that is reasonably related to a categorization. I am not sure I understand what that means and then under C it is a tonnage or volume based fee on solid waste disposal. I don't see any relationship back to anything. I does not look to me like there is any standard, am I missing that? Dilliard, I can not argue the question that it could be interpreted that way, however I know that was not what was intended. Our intent was to base the fee on the cost to the Department. **Rep. Noennig**, the total fee is a combination of those factors, is it your understanding that it needs to be related to the cost of the Department? Dilliard, Yes, that is correct. **Rep. Laible**, Mr. Dilliard, in your testimony regarding the City of Billings, they do annual on site inspections, to check new operations, etc. In that area you were just discussing, does this reflect the cost of the review? Dilliard, No, there are no additional fees other than those authorized by statute. **Rep. Mangan** Based on your previous discussion, No. 6, lines 21 through 23, the fees imposed by the

Board must include a percentage of volume and weight. Is that how the fee is calculated. Dilliard, that is part of the base for justifying the fees. **Rep. Mangan**, does this coordinate with the Section 5? Dilliard, Yes. **Rep. Noennig**, maybe you want to refer this to the sponsor, the question I have is would you or the sponsor have an objection if we developed some language that made it clear that whole fee charge is related to the cost? Would that be an acceptable amendment. Dilliard, the Department would have no problem. **Sen. Hargrove**, I am sure that they would be alright, but you might check with Ms. McClure, this is addressed in administrative boiler plate and I don't know what section of law, but there is a requirement that all such transactions be reasonable and prudent and have appropriate justification. In addition, to the fact that the Board of Environmental Review is designed to be objective. *{Tape : 1; Side : A; Approx. Time Counter : 17.8 - 30} {Tape : 1; Side : B; Approx. Time Counter : 0 - 11.9}*

**Closing by Sponsor:** **Sen. Hargrove**, closed SB 161. Just a couple of things that were mentioned based on the questions, this is designed to save money. You have experts and I don't have to remind anyone with the problems we have with Environmental Quality, air, soil and water, etc. You are ensuring yourself that you are not inviting a lawsuit. The out of state fees would involve the larger landfills, such as the City of Billings. Their fee would be \$100,000.00, nobody has ever applied for or used one of these permits. Just doesn't happen. Again, this is a bill to save money and not have to address this every year. With the appropriate checks and balances I think this bill accomplishes that. **Rep. Younkin** to carry on the floor. *{Tape : 1; Side : B; Approx. Time Counter : 11.9 - 16.8}*

#### **HEARING ON SB 168**

**Sponsor:** **Sen. Stonington, SD 15**

**Proponents:** **John Dilliard, DEQ**

**Bob Gilbert, Montana Tow Truck Operators & Recyclers**

**Jan Jelinski, MACO**

**Clay Williams, Park County**

**Linda Stoll, MT Local Health Providers**

**Terry Murphy, Lake County**

**Jim Dusenbin, MT Tow Truck Operator**

**Opponents:** None

**Opening Statement by Sponsor:** **Sen. Stonington, SD 15.** I have before you SB 168, which is the junk vehicle program fee bill.

Montana has a junk vehicle program, which started in 1993, what it does basically it keeps the junk and abandon vehicles off of our roads, out of the allies and out of the places where we would all just as soon someone had not left them for someone else to take care of. I am going to pass an article around here that appeared this morning in the Independent Record about the junk vehicle program in Broadwater and Jefferson Counties, with a picture that looks like an old Karmen-Ghia, that is definitely a junk vehicle. Fees for this program are collected from three different sources; at the time the vehicle title is transferred we collect \$1.50 each, from vehicle registrations we collect fifty cents apiece and from the motor vehicle wrecking facility license fee we collect \$50.00. In addition to that when the junk vehicles are collected and taken to a county yard, crushed and sold as scrap metal we collect the sales monies. The money is collected all year, sent to the state by the counties from vehicle licenses and then distributed back out to the counties twice a year. At the end of each fiscal year there is a large ending fund balance and at the beginning of the next fiscal year that money is distributed to the counties and again half way through the year the money is again distributed. When this program was first started the fees were about triple what they are today and what happened was in the first few years, the surplus at the end of the fiscal year skyrocketed because we were charging too much for these fees. Since then the fees have decreased twice and the ending fund balance, that accumulates at the end of the year, has been spent down. In addition to that, the scrap metal market has crashed. This is basically a fee for service program and if we want to see these vehicles collected we need to raise the fees. If we don't want to see the vehicles collected, we don't have to give them the money. It is your choice as to how you want to handle this. The DEQ has proposed an increase in fees to keep the program working. The increase being proposed is: vehicle title transfers would increase from \$1.50 to \$2.00 each, vehicle registration fees would increase from fifty cents to one dollar and the motor vehicle wrecking facility license would increase from \$50.00 to \$100.00. I reserve the right to close. There will need to be a small amendment on this because all fees and tax items need to take effect at the beginning of the calendar year.

**EXHIBIT(loh51a03) EXHIBIT(loh51a04) {Tape : 1; Side : B; Approx. Time Counter : 16.8 - 23.6}**

**Proponents' Testimony: Joe Dilliard, DEQ.** Proponent, handed in his testimony. **EXHIBIT(loh51a05){Tape : 1; Side : B; Approx. Time Counter : 23.6 - 30}**

**Bob Gilbert, Montana Tow Truck Operators and Recyclers.** We support the junk vehicle program. The program has worked very well over the years, on the second page of the bill addressing MADA, you will see the increase to \$100.00. The chair of our association said if

we can't afford another \$50.00 to keep this program going we should just close our doors. **{Tape : 2; Side : A; Approx. Time Counter : 0 - 2.2}**

**Jane Jelinski, MACO**, We support this program, as it has been very effective, promotes safety, and adds to the economic development by cleaning up the roadsides. The millions of tourists don't have to look at junk vehicles along the roads, which was the case before this program was introduced. **{Tape : 2; Side : A; Approx. Time Counter : 2.2 - 3.2}**

**Clay Williams, Park County**, I am the Park County junk vehicles director. I have a letter from the Park County Commissioners supporting this. This has been a beneficial program for our county. This year, so far, I have picked up 110 cars in Park and probably will get 90 more before the end of the year. **EXHIBIT(loh51a06) {Tape : 2; Side : A; Approx. Time Counter : 3.2 - 3.9}**

**Linda Stoll, Montana Local Health Officers Group**, we support this law. I have a letter from the Health Department in which she describes this measure. **EXHIBIT(loh51a07) EXHIBIT(loh51a08) {Tape : 2; Side : A; Approx. Time Counter : 3.9 - 4.8}**

**Terry Murphy, Lake County**, I have provided some information for you, noting that metal prices are a concern. We support this program. **EXHIBIT(loh51a09) {Tape : 2; Side : A; Approx. Time Counter : 4.8 - 6.6}**

**Jim Desenbin, Pres. Montana Tow Truck Assoc.**, we support this bill. **{Tape : 2; Side : A; Approx. Time Counter : 6.6 - 7.7}**

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** **Rep. Peterson** asked Mr. Dilliard: I understand that the steel prices have gone south, my question is do you still crush and sell? Mr. Dilliard, Yes, we do still crush the cars, the revenues we are getting those cars has gone from \$40 to \$50.00 a ton down to a low of \$8.00 per ton. **Rep. Peterson** I refer to the chart that Sen. Stonington gave us, on page 4-in fiscal year 2000 we have a very large component of annual vehicle reimbursement, what had changed there to increase that amount? Mr. Dilliard-at the last legislative session, the legislature amended the statute to require the department to reimburse the towors for their costs of towing, that is the increase we are seeing. **Rep. Esp** - Mr. Dilliard, do you anticipate any increase at the state level of funding with the administrative



budget? Mr. Dilliard-No, we have not asked for any increase. **Rep. Liable** to Mr. Dilliard- I see that \$900,000 is sent back to different counties, how is that distributed to the counties? Mr. Dilliard-that is based on formula that set in statute. We give the counties up to \$1.00 for every registered vehicle they have in their county. The only exception is that Lincoln county has less than 5000 vehicles, we have established a minimum of \$5,000.00. **Rep. Noennig** questioned Bob Gilbert-Did we amend the junk vehicle statute last session, is that correct? Gilbert explained how the system works, the tow truck owners were not being paid for towing and they decided they would no longer tow these vehicles. They finally made an agreement with the counties to accept reimbursement for the cost of the towing or a flat fee of \$70.00, which often does not cover expenses. This way they do not have to go for a sheriff's sale to recover the towing fees. Gilbert explained the differences between abandoned and junk vehicles. **Rep. Anderson** asked Mr. Dilliard, If a vehicle is repairable and can be rebuilt does the tow truck operator get to keep that vehicle in lieu of towing costs? Dilliard-No, these types of vehicles are put up for public auction and the tow truck operator can bid on the vehicle, if he is not the successful bidder then he is paid for the towing from the sale proceeds. {Tape : 2; Side : A; Approx. Time Counter : 7.7 - 23.3}

**Closing by Sponsor:** Sen. Stonington thanks for a lot of good questions. This is a good program, lets give them the money they need. Rep. Thomas will carry on the house floor. {Tape : 2; Side : A; Approx. Time Counter : 23.3 - 24.6}

#### HEARING ON SB 175

**Sponsor:** Sen. Glaser, SD 8

**Proponents:** None

**Opponents:** None

**Opening Statement by Sponsor:** Sen. Glaser, SD 8 introduced SB 178. The interim taxation committee discovered Rep. Grinde's resolution that was on the ballot had a few minor flaws and a few major flaws that probably the voters would miss. The committee determined they would fix the bill so that it would pass. The committee came up with a bill that fixes and makes the system work without setting any policy and one bill that sets policy. This is not the money policy bill. This basically corrects all the minor problems in the application of Rep. Grinde's proposal. It gives instructions on how to apply this statute, however for all practical purposes the Counties started doing this the first of the year, because they had

no choice or guidance. This bill just makes it legal for the counties to take these actions. *{Tape : 2; Side : A; Approx. Time Counter : 24.6 - 26.5}*

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** Rep. Liable to Glaser: On page 12, it calls for 25 cents and later it mentions 50 cents for the pension fund. What is it doing in this bill? Glaser- this money flows that way and they are just working to clean up the transfers for the counties. This is pension money. Rep. Lee Nowhere in here is light vehicle defined, is it somewhere else in statute? Glaser- it is defined in other sections. Rep. Esp to Glaser - Does this set the fees on motorcycles? Glaser-No. The motorcycle fees are dealt with in another bill called the "Slick Willy" bill. *{Tape : 2; Side : A; Approx. Time Counter : 26.5 - 30}*  
*{Tape : 2; Side : B; Approx. Time Counter : 0 - 4}*

**Closing by Sponsor:** Sen. Glaser closed. *{Tape : 2; Side : B; Approx. Time Counter : 4 - 5}*

#### **EXECUTIVE ACTION ON SB 161**

**Motion:** REP. JACOBSON moved that SB 161 BE CONCURRED IN.

**Discussion:** Eddie McClure explains the effect of the bill and explains how the fee increases work. Agencies must justify the increase in fees. Rep. Younkin explained the Board of Environmental Review and the make up of the board. *{Tape : 2; Side : B; Approx. Time Counter : 5 - 18.5}*

**Motion/Vote:** REP. JACOBSON moved that SB 161 BE CONCURRED IN. Motion carried 15-3 with Esp, Liable and Anderson voting no. *{Tape : 2; Side : B; Approx. Time Counter : 18.5 - 19.1}*

#### **EXECUTIVE ACTION ON SB 168**

**Motion:** REP. MANGAN moved that SB 168 BE CONCURRED IN.

**Motion/Vote:** REP. NOENNIG moved that SB 168 BE AMENDED. Motion carried unanimously.

**Motion/Vote:** REP. MANGAN moved that SB 168 BE CONCURRED IN AS AMENDED. Motion carried unanimously. {Tape : 2; Side : B; Approx. Time Counter : 19.1 - 23.1}

**EXECUTIVE ACTION ON SB 175**

**Motion:** REP. YOUNKIN moved SB 175. {Tape : 2; Side : B; Approx. Time Counter : 23.1 - 30}

**Discussion:** Rep Younkin and Rep. Anderson discussed the merits of this bill.

**Motion/Vote:** REP. YOUNKIN moved that SB 175 BE CONCURRED IN AS AMENDED. Motion carried 13-5 with Esp, Lawson, Lee, Newman, and Whitaker voting no.

**ADJOURNMENT**

Adjournment: 5:32 P.M.

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REP. MARK NOENNIG, Chairman

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PATI O'REILLY, Secretary

MN/PO

**EXHIBIT** (loh51aad)